
IN THE
UNITED STATES CIRCUIT
COURT OF APPEALS
FOR THE
NINTH CIRCUIT

UNITED STATES OF AMERICA,
Appellant,
vs.

JENNIE PETERSON (Formerly JENNIE
BENEDICT), WILLIAM H. ALBRIGHT,
and VILLA C. ALBRIGHT,
Appellees.

BRIEF FOR APPELLEES,
WILLIAM H. ALBRIGHT AND VILLA C.
ALBRIGHT.

COOPER & STEPHENSON,
Attorneys for Appellees
WILLIAM H. ALBRIGHT AND VILLA C. ALBRIGHT

OCT 26 1914

F. D. Monckton,
Clerk.

IN THE
UNITED STATES CIRCUIT
COURT OF APPEALS
FOR THE
NINTH CIRCUIT

UNITED STATES OF AMERICA,
Appellant,

vs.

JENNIE PETERSON (Formerly JENNIE
BENEDICT), WILLIAM H. ALBRIGHT,
and VILLA C. ALBRIGHT,

Appellees.

No. 2414

BRIEF FOR APPELLEES,
WILLIAM H. ALBRIGHT AND VILLA C.
ALBRIGHT.

MAY IT PLEASE THE COURT:

The statement of this case by the United States District Attorney is so full and fair that we feel relieved of the necessity of making any additions thereto.

The attorney for the Appellant has admitted that there is nothing in the claim that the Peter-

son land is mineral in character, and he concedes that at the time it was filed upon by Peterson it was open to such filing.

This leaves for determination only the question whether the land was taken by Peterson for Albright under an agreement substantially as claimed by Peterson.

The District Court in its memorandum opinion, filed herein and contained on pp. 49 and 50 of the record, is so clear and succinct a statement of the short-comings of complainant's proof that we feel warranted in quoting it entirely as our argument in chief.

“MEMO.

“The Court refers to its comment in the companion case, No. 226, United States vs. Charles Gustafson, et al.

The evidence herein falls short of the high degree of proof the Government must produce to warrant cancellation of its executed contract, its patent and grant of title. It may be the truth is as complainant alleges, but the evidence in quantity and quality does not satisfy and convince the court it is so. It serves to arouse suspicion it may even preponderate in favor of complainant, but that does not suffice. It may be fraud triumphs and the guilty escapes, but that does not warrant a contrary conclusion herein. When the Government deliberately issues its

patent to lands, the instrument is high and solemn evidence of its own validity, to be overcome only by clear and convincing evidence, in quantity and quality which commands respect and produces conviction. Peterson does not commend herself to credibility.

There are no circumstances to corroborate Peterson. Tickets, letters, etc., of which she speaks, rest on her (49) testimony. Albrights deny her statements. Her insistence that her lands should have water thereon is inconsistent to some extent with an agreement with Albright. She may have had some such arrangement as Carter. Albright's books are inconsistent with her testimony that he paid all her expenses on the land. If as Whittaker says many of Albright's quarry-men were taking up lands for Albright, why should he have sent to Michigan at his expense for Peterson?

Upon the whole, the proof fails."

We would feel like submitting the case upon the opinion of the District Court were it not for the fact that Counsel for Appellant makes a somewhat extraordinary attempt to find in the evidence some corroboration of the story told by Peterson, and we feel that we perhaps owe to the court the duty of showing that this alleged corroboration of Peterson exists only in the very

vivid imagination of Counsel for Appellant.

Counsel recognizes the necessity for finding corroboration for the testimony of Peterson. Confessedly, according to her own story she started out deliberately intending to defraud the Government by obtaining the title to the land, not for the purposes for which the law authorizes it to be taken, but deliberately for speculative purposes.

We agree with the District Court that Peterson does not commend herself to credibility. We also insist that he is right in saying that there are no circumstances to corroborate Peterson.

She claims that she left Michigan, July 5, 1901 to come out to Montana for the purpose of filing upon the land and that Albright had written her and sent her a ticket with which to come. Neither the letter nor the ticket are found to corroborate her. She thinks the letter may have been destroyed, but she does not know. If any such ticket had been obtained for her use, it could, of course, have been found among the records of the Railroad Company which issued it. Nothing of the kind appears to have been attempted. Her mother still living in Michigan would probably have known of the letter and ticket had they ever existed.

It is claimed by the District Attorney that Gustafson corroborates Peterson. Gustafson's testimony is found upon p. 95 of the Transcript.

He claims that he had a conversation with Albright and that Albright told him that Jennie Peterson was going out there to take up land for Albright, and that this talk was in April or May and that Peterson's filing was in July.

Confessedly this alleged talk with Gustafson was long before Albright had ascertained that Peterson would come out from Michigan. So that the corroboration, so far as Gustafson is concerned, is a myth.

The only other corroborating witness is Frank C. Whittaker, the uncle of Peterson.

We submit that a careful reading of the testimony of Whittaker, found on pp. 75 to 93 of the record will disclose that it is wholly unworthy of credence. He is confessedly unfriendly to the Albrights and his testimony consists of a long rambling series of generalities, wholly devoid of time, place or circumstance, and that the character which he gives himself does not recommend him as a person entitled to much, if any, credit.

Peterson claims that all of the expenses incurred by her upon her Homestead were paid by Albright. This is distinctly contradicted by Albright's books which Peterson kept for a number of years. Peterson claims she was to receive \$640 for her land the "same as the others." She actually received \$800. Transcript p. 102.

The testimony of Albright, commencing with p. 96 and continuing to p. 112 of Transcript,

shows that whenever Peterson, or Gustafson, or any of the other homesteaders were absent from work on their respective Homesteads, they lost their time and that they were only paid for the time they actually put in at the quarries.

This all goes to show that the books which Peterson kept distinctly contradict her, and what is true of Peterson is true of Whittaker and Gustafson.

The District Attorney in his brief criticises the testimony of Mrs. Albright as unreasonable and the chief ground for his allegation that it is unreasonable seems to be the fact that Mrs. Albright testified that she was not friendly with Peterson and had very little conversation with her. Assuming that Peterson and Mrs. Albright were working together and that it was therefore unreasonable that they should not talk more or less of their affairs, leaving the inference that the District Attorney's idea is that Peterson was at work for Mrs. Albright in a domestic capacity. This is not the situation.

It is true Mrs. Albright owned most of the lands upon which the Albright quarries were situated, but the record also discloses that Mrs. Albright had leased the quarries to the Boston & Montana Consolidated Copper and Silver Mining Company upon a royalty basis, the Mining Company paying Mrs. Albright a royalty for all of the limestone taken from her lands, and that

the Mining Company in turn leased the lands to Albright and Albright extracted the rock from the quarries for so much per ton and shipped it to the Mining Company. It will thus be seen that Albright conducted the mining of rock and the business incident thereto, and that Peterson worked for him in the capacity of a book-keeper and not for Mrs. Albright.

See Tr. p 95, Testimony of Gustafson and the testimony of Albright following.

Mrs. Albright attending to her domestic concerns need not of necessity have been drawn into any companionship with Peterson. So that the criticism leveled at her testimony by the District Attorney is without force.

Going back to the testimony of Albright (Tr. p. 101) he shows by reference to his books that he paid none of the expenses incident to the improvements upon the Peterson place. He shows that one Hermann built the cabin and did other work for Peterson and that while Hermann was absent doing such work he did not receive any credit at the quarries, but lost his time while at work for Peterson. Further, the interview testified to by Albright with Peterson wherein he alleges she demanded a thousand dollars from him and threatened that if the money was not forthcoming she and Whittaker and Gustafson would send Albright to the penitentiary, by preponderance of the evidence does not seem to be denied

by Peterson. And the testimony of Whittaker is not only shown to be without reliability because of its very general character, but he is as positive that the Peterson claim is underlaid with gypsum as he is about any of his testimony. And the fact is made so clear by the testimony of Prof. Morton that there is no gypsum in the Peterson claim that Whittaker's testimony is shown to be wholly unreliable.

Counsel for complainant insists that either the court must find the contract which Peterson says was made, was in fact made and carried out, or the court must find that the witnesses conspiring together concocted an elaborate scheme of falsification and carried it out with deliberate, preconcerted and harmonious perjury.

Not quite so serious as that—Perjury, yes—but far from harmonious and not very elaborate.

The statements of all of these witnesses are so general and indefinite and so devoid of time, place or circumstance that the statements of one have little, if any, relation or tangible connection or probative force as corroborative of those of the others. And it is not difficult to understand that persons who confess to have committed perjury may readily do so again.

Accordingly, we feel that the District Court was right in saying "There are no circumstances to corroborate Peterson. Ticket, letters, etc., of which she speaks, rest on her testimony. Albright

denies her statements. Her insistence that her lands should have water thereon is inconsistent to some extent with an agreement with Albright. She may have had some such arrangement as Carter. Albright's books are inconsistent with her testimony that he paid all her expenses on the land. If as Whittaker says many of Albright's quarrymen were taking up lands for Albright, why should he have sent to Michigan at his expense for Peterson?"

In view of the fact that complainant issued its patent to Peterson and of the solemn character of this instrument and of the clear character of proof required to set aside or cancel a patent, we submit the court was right in declining to cancel the patent in this case in view of the character of the evidence contained in the record, and insist that the judgment of the court below, being right, should be affirmed.

Respectfully submitted,

Attorneys for Appellees,
William H. and Villa C. Albright.

